

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

KELVIN BERNARD WORTH	§	
v.	§	CIVIL ACTION NO. 2:08cv384
UNITED STATES OF AMERICA	§	

**MEMORANDUM ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE
AND ENTERING FINAL JUDGMENT**

The Movant Kelvin Worth, proceeding *pro se*, filed this motion to vacate or correct his sentence pursuant to 28 U.S.C. §2255 complaining of the legality of his conviction. This Court ordered that the case be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

Worth was convicted on his plea of guilty of the offense of possession with intent to distribute and distribution of cocaine base. He complained that he was tricked into signing the guilty plea because it was not him on the video, his plea of guilty was coerced by threats from the prosecutor, the Government tampered with evidence, the prosecution failed to disclose favorable evidence, and he received ineffective assistance of counsel. He also complained that he was denied the right to appeal after being assured that he could do so, his right to due process was violated with regard to his arrest in Dallas County, he was held in the Smith County Jail with state prisoners where he was assaulted twice, the evidence against him was tainted, there are new guidelines applicable to this offense, he improperly received an enhancement for obstruction of justice, the waiver of appeal in the plea agreement he signed is invalid, and this waiver was “nullified” by statements made by the trial court.

The Magistrate Judge ordered the Government to answer, and the Government filed an answer stating that all of Worth's claims are barred by the waiver of appeal provision in the plea agreement. Worth filed an answer denying that he signed the plea agreement, but saying that the signature page had been part of a different agreement, and that the page had been added to the plea agreement.

After review of the pleadings, the Magistrate Judge issued a Report recommending that the motion be dismissed. The Magistrate Judge noted that on direct appeal, the Fifth Circuit held that Worth's waiver of appeal was knowing and voluntary. The Magistrate Judge reviewed each of the claims raised by Worth, in light of this holding, and concluded that these claims were without merit. The Magistrate Judge also recommended that Worth be denied a certificate of appealability *sua sponte*.

Worth received a copy of the Magistrate Judge's Report on August 14, 2009, but filed no objections thereto; accordingly, he is barred from *de novo* review by the district judge of those findings, conclusions, and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-to proposed factual findings and legal conclusions accepted and adopted by the district court. *Douglass v. United Services Automobile Association*, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

The Court has reviewed the pleadings in this case, including the motion to vacate or correct sentence, the answer filed by the Government, the Movant's response thereto, and the Report of the Magistrate Judge. Upon such review, the Court has concluded that the Report of the Magistrate Judge is correct. It is accordingly

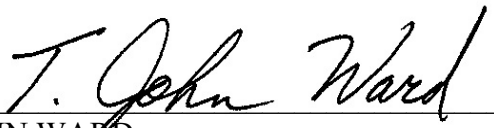
ORDERED that the Report of the Magistrate Judge is hereby ADOPTED as the opinion of the District Court. It is further

ORDERED that the above-styled motion to vacate or correct sentence be and hereby is DISMISSED with prejudice. It is further

ORDERED that the Movant Kelvin Worth is hereby DENIED a certificate of appealability *sua sponte*. Finally, it is

ORDERED that any and all motions which may be pending in this action are hereby DENIED.

SIGNED this 30th day of September, 2009.



T. JOHN WARD
UNITED STATES DISTRICT JUDGE